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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 Patrick M. McCollum, et al.

13 Plaintiffs,

14 v.

15 The State of California, et al.,

16 Defendants.

Case No. 04-03339 CRB

**~~[PROPOSED]~~ ORDER DISMISSING
INMATE PLAINTIFFS' THIRD, FOURTH,
AND FIFTH CLAIMS WITH PREJUDICE**

17
18 WHEREAS this Court's December 13, 2007 and January 8, 2008 Orders ("2007 and 2008
19 Orders") ruled that Inmate Plaintiffs Kenneth Capogreco, Scott Collins, Donald Dacus, Kevin
20 Iloff, Gregory Mourland, and David Spooner failed to timely exhaust a challenge to California's
21 provision of paid chaplains to inmates of some faiths and not others;

22 WHEREAS the Court's 2007 and 2008 Orders dismissed Plaintiffs Third (Federal Free
23 Exercise Clause of the First Amendment), Fourth (RLUIPA), and Fifth (State Free Exercise
24 Clause) Claims to the extent that they challenge the state's Five Faith's Policy, including the
25 provision of paid chaplains to some faiths and not others;

26 WHEREAS the Court's 2007 and 2008 Orders dismissed Plaintiffs' First (Establishment
27 Clause) and Second (Equal Protection Clause) Claims in their entirety;
28

1 WHEREAS the Court's 2007 and 2008 Orders rejected Plaintiffs' "relation back" and
 2 "continuing violation" arguments and dismissed as time-barred the claims related to certain
 3 grievances filed by Plaintiffs Capogreco, Collins, and Mourland brought pursuant to 42 U.S.C. §
 4 1983;

5 WHEREAS this order does not relate to Plaintiffs' claims dismissed by the Court's 2007
 6 and 2008 Orders, as described above, which Plaintiffs do not intend to and do not agree to
 7 dismiss, but intend to pursue on appeal;

8 WHEREAS Plaintiffs do intend to dismiss those aspects of claims Three, Four, and Five
 9 of Plaintiff's Third Amended Complaint that were not dismissed and that remain pending before
 10 this Court;

11 Having considered Plaintiffs' request to voluntarily dismiss Plaintiffs' remaining claims
 12 Three, Four, and Five of Plaintiffs' Third Amended Complaint in the above captioned action that
 13 remain pending before this Court, having determined that such dismissal will not prejudice
 14 defendants, and good cause appearing:

15 IT IS HEREBY ORDERED that Plaintiffs' claims remaining in this Court are dismissed
 16 from this action with prejudice pursuant to FRCP 41(a)(2).

17 IT IS FURTHER ORDERED that all matters relating to bills of cost in this action are stayed
 18 pending appeal.

19 Dated: June 2, 2008

20 By:

